

SAUL EWING
ARNSTEIN
& LEHR ^{LLP}

Charles M. Lizza

Phone: (973) 286-6715

Fax: (973) 286-6815

clizza@saul.com

www.saul.com

October 13, 2020

VIA ECF

The Honorable Freda L. Wolfson, U.S.D.J.
Chief Judge, United States District Court
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: Mitsubishi Tanabe Pharma Corporation, et al. v. Sandoz Inc., et al.
Civil Action No. 17-5319 (FLW)(DEA) (consolidated)

Dear Chief Judge Wolfson:

This firm, together with Paul Hastings LLP and Quinn Emanuel Urquhart & Sullivan, LLP, represents plaintiffs Mitsubishi Tanabe Pharma Corporation, Janssen Pharmaceuticals, Inc., Janssen Pharmaceutica NV, Janssen Research and Development, LLC, and Cilag GmbH International in the above-captioned, consolidated matter. Pursuant to our discussion with Your Honor at the end of the trial day on October 2, 2020, we write on behalf of all parties regarding post-trial submissions and the “conclusion date of the trial” pursuant to the Court’s April 24, 2020 Order (D.I. 155). *See* Tr. at 1126:25-1127:3; 1127:12-14; 1130:17-21.

First, the parties have conferred and agree, subject to Your Honor’s approval, to submit proposed findings of fact and conclusions of law, limited to 100 pages (combined) for each party in double-spaced, 12-point Times New Roman, by November 19, 2020 (three weeks after the last day of trial testimony on October 29, 2020). The parties will also provide hyperlinks to the trial record in their proposed findings of fact and conclusions of law.

Second, to accommodate Your Honor’s request that the parties preserve a four-month period within which the Court may render a decision, Zydus commits not to launch the products within the scope of the ANDAs at issue in this action—i.e., generic equivalents of the Invokana and Invokamet Products—for four months from the filing date of the parties’ post-trial submissions. For the sake of clarity, if the Court approves a November 19, 2020 filing date, Zydus’ agreement not to launch would extend up to and including March 19, 2021.

Hon. Freda L. Wolfson, U.S.D.J.
October 13, 2020
Page 2

Third, the parties have conferred and propose presenting closing arguments limited to one hour for each side on either of December 17, 18, 21, 22, or 23, subject to the Court's approval and availability.¹

Finally, the parties have divergent views on whether post-trial briefs are necessary:

Zydus's position: At the conclusion of the obviousness portion of the trial, Your Honor clearly stated that the parties should submit concise post-trial submissions that get right to the heart of the matter. Zydus agrees. Although Zydus is proposing a third filing in addition to proposed findings of fact and conclusions of law, we submit that short trial briefs would serve that goal. As a companion to proposed findings of fact and conclusions of law, a trial brief would guide Your Honor's review of those more cumbersome submissions. In particular, a trial brief would provide each party with a vehicle to direct the Court's attention to the most important evidence, explain how the evidence interrelates (i.e., "how the pieces fit together"), and then explain how the evidence fits within the applicable analytical frameworks under the relevant law. Accordingly, Zydus proposes that the parties be permitted to submit trial briefs of not more than 25 pages in 12 point Times New Roman font and otherwise consistent with Local Rule 7.2(b)-(d).

Plaintiffs' position: Plaintiffs do not believe that another round of briefing in the form of post-trial briefs is necessary or appropriate at this point. As an initial matter, during the parties' discussion with Your Honor regarding post-trial submissions, the Court asked only for findings of fact and conclusions of law, even though counsel for Zydus raised the issue in terms of "briefs." (See Tr. at 1127:21-25; 1128:15-1128:18; 1130:17-21.) The parties have already submitted more than 1000 pages of paper through pre-trial briefs and proposed findings of fact and conclusions of law (not to mention a 610-page pretrial order). The evidence is in. Your Honor will have sat for six full trial days, and the parties are requesting to file an additional 100 pages each of proposed findings of fact and conclusions of law. We believe that this is the only guide that the Court will need to analyze the issues and render its decision (i.e., we believe that the Court will know "how the pieces fit together" and how the pieces fit within the legal framework—another advocacy piece will not aid that process). Any remaining issues that the parties wish to present can be addressed during closing arguments.

* * *

We have provided a form of endorsement below, including alternative proposals for post-trial briefs in light of the parties' disagreement on this issue. Thank you for Your Honor's kind attention to this matter.

¹ Plaintiffs' counsel will be involved in a final hearing relating to an international arbitration from approximately November 23 to December 11.

Hon. Freda L. Wolfson, U.S.D.J.
October 13, 2020
Page 3

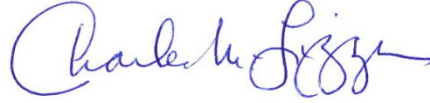
Respectfully yours,

s/ Sean R. Kelly

Sean R. Kelly

Attorneys for Defendants

Respectfully yours,



Charles M. Lizza

Attorneys for Plaintiffs

cc: All counsel (via e-mail)

SO ORDERED on this ____ day of _____, 2020, that the parties shall submit post-trial proposed findings of fact and conclusions of law on November 19, 2020, which shall be limited to 100 pages in double-spaced, 12-point Times New Roman.

IT IS FURTHER ORDERED THAT, as agreed above, Zydus commits not to launch the products within the scope of the ANDAs at issue in this action—i.e., generic equivalents of the Invokana and Invokamet Products—for four months from the filing date of the parties' post-trial submissions.

[Zydus's Proposal:] IT IS FURTHER ORDERED THAT the parties shall submit post-trial briefs of not more than 25 pages in 12 point Times New Roman font and otherwise consistent with Local Rule 7.2(b)-(d).on November 19, 2020.

[Plaintiffs' Proposal:] IT IS FURTHER ORDERED THAT no post-trial briefs shall be submitted.

IT IS FURTHER ORDERED THAT the Court will hear closing arguments on December ____, 2020 at _____ a.m./p.m.

Hon. Freda L. Wolfson, U.S.D.J.